

APPEAL NO. 020735
FILED APRIL 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on February 26, 2002. The hearing officer resolved the disputed issues before her by determining that the respondent (claimant) sustained a compensable injury in the form of an occupational disease; that the claimant's date of injury is _____; that the appellant (carrier) is not relieved from liability under Section 409.002 because the claimant had good cause for failing to timely notify his employer pursuant to Section 409.001; and that the claimant had disability beginning on December 4, 2001, and continuing through February 25, 2002. The carrier appealed on sufficiency grounds. The claimant responded, urging affirmance.

DECISION

Affirmed.

The claimant testified that he worked as a long haul truck driver for a milk hauling company; that he drove an older model truck which did not have air suspension, nor did it have any lumbar or neck support in the seat; that his seat would "bottom out" which dropped him on his tail bone; that he had experienced pain on and off for a couple of years but did not attribute it to a single cause; and that he finally sought medical attention on _____, when the pain became unbearable. The claimant also testified that he did not know his injury was work-related until early November when his doctor explained to him the results of an MRI which showed a herniated disc at L5-S1; that he reported the injury to his employer on November 23, 2001; and that he eventually had surgery which resulted in him being off work from December 4, 2001, through February 25, 2002.

The hearing officer did not err in determining that the claimant sustained a compensable injury on _____. An employee has the burden of proving, by a preponderance of the evidence, that he or she sustained a compensable injury. Texas Workers' Compensation Commission Appeal No. 94248, decided April 12, 1994. The hearing officer was persuaded by the claimant's testimony and the medical reports in evidence that the claimant sustained a compensable injury on _____. The hearing officer commented that the "Claimant has shown that the prolonged sitting and unusual vibrations and jarring his back sustained while performing his job duties were more than that to which the general public are exposed," and that the "Claimant has shown that he sustained damage or harm to the physical structure of his body, e.g., his low back, due to repetitive trauma he sustained during the course and scope of his employment as a truck driver." The hearing officer further determined that the claimant established disability beginning on December 4, 2001, and continuing through February 25, 2002. It is the hearing officer, as the sole judge of the weight and credibility of the evidence (Section 410.165(a)), who resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the

conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). This is equally true of medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ).

Similarly, the hearing officer did not err in determining that the claimant had good cause for failing to timely report to the employer that he sustained a work-related injury within 30 days of _____. Whether or not an injured worker has good cause for failing to report an injury to his employer within 30 days as is required by Section 409.001 is a question of fact for the hearing officer to resolve. The hearing officer commented that the claimant acted as a reasonably prudent person in failing to report his injury within 30 days. She further commented that the claimant continued to work after he reported the injury and that he clearly trivialized his injury until an MRI revealed a herniation.

Nothing in our review of the record indicates that the challenged determinations are so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Accordingly, no sound basis exists for us to disturb those determinations on appeal. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **ROYAL INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CORPORATION SERVICES COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Philip F. O'Neill
Appeals Judge

CONCUR:

Gary L. Kilgore
Appeals Judge

Roy L. Warren
Appeals Judge